

By: Anchia

H.B. No. 1170

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the investment of certain state retirement system funds in companies that manufacture firearms or firearm ammunition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 8, Government Code, is amended by adding Chapter 809 to read as follows:

CHAPTER 809. PROHIBITION ON INVESTMENT IN COMPANIES THAT

MANUFACTURE FIREARMS OR FIREARM AMMUNITION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 809.001. DEFINITIONS. In this chapter:

(1) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

(2) "Direct holdings" means, with respect to a company, all securities of that company held directly by a state retirement system in an account or fund in which a state retirement system owns all shares or interests.

(3) "Firearm" has the meaning assigned by Section [46.01](#), Penal Code.

(4) "Firearm ammunition" means ammunition or

1 cartridge cases, primers, bullets, or propellant powder designed
2 for use in a firearm.

3 (5) "Indirect holdings" means, with respect to a
4 company, all securities of that company held in an account or fund,
5 such as a mutual fund, managed by one or more persons not employed
6 by a state retirement system, in which the state retirement system
7 owns shares or interests together with other investors not subject
8 to the provisions of this chapter. The term does not include money
9 invested under a plan described by Section 401(k) or 457 of the
10 Internal Revenue Code of 1986.

11 (6) "Listed company" means a company listed by the
12 comptroller under Section 809.051.

13 (7) "State retirement system" means:

14 (A) the Employees Retirement System of Texas,
15 including a retirement system administered by that system;

16 (B) the Teacher Retirement System of Texas;

17 (C) the Texas Municipal Retirement System; and

18 (D) the Texas County and District Retirement
19 System.

20 Sec. 809.002. OTHER LEGAL OBLIGATIONS. With respect to
21 actions taken in compliance with this chapter, including all good
22 faith determinations regarding companies as required by this
23 chapter, a state retirement system and the comptroller are exempt
24 from any conflicting statutory or common law obligations, including
25 any obligations with respect to making investments, divesting from
26 any investment, preparing or maintaining any list of companies, or
27 choosing asset managers, investment funds, or investments for the

1 state retirement system's securities portfolios.

2 Sec. 809.003. INDEMNIFICATION OF STATE GOVERNMENTAL
3 ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an
4 action, inaction, decision, divestment, investment, company
5 communication, report, or other determination made or taken in
6 connection with this chapter, the state shall, without regard to
7 whether the person performed services for compensation, indemnify
8 and hold harmless for actual damages, court costs, and attorney's
9 fees adjudged against, and defend:

10 (1) an employee, a member of the governing body, or any
11 other officer of a state retirement system;

12 (2) a contractor of a state retirement system;

13 (3) a former employee, a former member of the
14 governing body, or any other former officer of a state retirement
15 system who was an employee, member of the governing body, or other
16 officer when the act or omission on which the damages are based
17 occurred;

18 (4) a former contractor of a state retirement system
19 who was a contractor when the act or omission on which the damages
20 are based occurred; and

21 (5) a state retirement system.

22 Sec. 809.004. NO PRIVATE CAUSE OF ACTION. (a) A person,
23 including a member, retiree, or beneficiary of a state retirement
24 system to which this chapter applies, an association, a research
25 firm, a company, or any other person may not sue or pursue a private
26 cause of action against the state, a state retirement system, a
27 current or former employee, a member of the governing body, or any

1 other officer of a state retirement system, or a contractor of a
2 state retirement system, for any claim or cause of action,
3 including breach of fiduciary duty, or for violation of any
4 constitutional, statutory, or regulatory requirement in connection
5 with any action, inaction, decision, divestment, investment,
6 company communication, report, or other determination made or taken
7 in connection with this chapter.

8 (b) A person who files suit against the state, a state
9 retirement system, an employee, a member of the governing body, or
10 any other officer of a state retirement system, or a contractor of a
11 state retirement system, is liable for paying the costs and
12 attorney's fees of a person sued in violation of this section.

13 Sec. 809.005. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT
14 WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. A state
15 retirement system is not subject to a requirement of this chapter if
16 the state retirement system determines that the requirement would
17 be inconsistent with its fiduciary responsibility with respect to
18 the investment of system assets or other duties imposed by law
19 relating to the investment of system assets, including the duty of
20 care established under Section 67, Article XVI, Texas Constitution.

21 Sec. 809.006. RELIANCE ON COMPANY RESPONSE. The
22 comptroller and a state retirement system may rely on a company's
23 response to a notice or communication made under this chapter
24 without conducting any further investigation, research, or
25 inquiry.

26 SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

27 Sec. 809.051. LISTED COMPANIES. (a) The comptroller shall

1 prepare and maintain, and provide to each state retirement system,
2 a list of all companies that manufacture firearms or firearm
3 ammunition. In maintaining the list, the comptroller may review
4 and rely, as appropriate in the comptroller's judgment, on publicly
5 available information regarding companies, including information
6 provided by the state, nonprofit organizations, research firms,
7 international organizations, and governmental entities.

8 (b) The comptroller shall update the list annually or more
9 often as the comptroller considers necessary, but not more often
10 than quarterly, based on information from, among other sources,
11 those listed in Subsection (a).

12 (c) Not later than the 30th day after the date the list of
13 companies that manufacture firearms or firearm ammunition is first
14 provided or updated, the comptroller shall file the list with the
15 presiding officer of each house of the legislature and the attorney
16 general and post the list on a publicly available website.

17 Sec. 809.052. IDENTIFICATION OF INVESTMENT IN LISTED
18 COMPANIES. Not later than the 30th day after the date a state
19 retirement system receives the list provided under Section 809.051,
20 the state retirement system shall notify the comptroller of the
21 listed companies in which the state retirement system owns direct
22 holdings or indirect holdings.

23 Sec. 809.053. ACTIONS RELATING TO LISTED COMPANY. (a) For
24 each listed company identified under Section 809.052, the state
25 retirement system shall send a written notice informing the company
26 of its status as a listed company and warning the company that it
27 may become subject to divestment by state retirement systems.

1 (b) Not later than the 90th day after the date the company
2 receives notice under Subsection (a), the company must cease
3 manufacturing firearms or firearm ammunition, as applicable, in
4 order to avoid qualifying for divestment by state retirement
5 systems.

6 (c) If, during the time provided by Subsection (b), the
7 company ceases manufacturing firearms or firearm ammunition, as
8 applicable, the comptroller shall remove the company from the list
9 maintained under Section 809.051 and this chapter will no longer
10 apply to the company unless it resumes manufacturing firearms or
11 firearm ammunition, as applicable.

12 (d) If, after the period provided by Subsection (b) expires,
13 the company continues manufacturing firearms or firearm
14 ammunition, as applicable, the state retirement system shall sell,
15 redeem, divest, or withdraw all publicly traded securities of the
16 company, except securities described by Section 809.055, according
17 to the schedule provided by Section 809.054.

18 Sec. 809.054. DIVESTMENT OF ASSETS. (a) A state retirement
19 system required to sell, redeem, divest, or withdraw all publicly
20 traded securities of a listed company shall comply with the
21 following schedule:

22 (1) at least 50 percent of those assets must be removed
23 from the state retirement system's assets under management not
24 later than the 180th day after the date the company receives notice
25 under Section 809.053 or Subsection (b) unless the state retirement
26 system determines, based on a good faith exercise of its fiduciary
27 discretion and subject to Subdivision (2), that a later date is more

1 prudent; and

2 (2) 100 percent of those assets must be removed from
3 the state retirement system's assets under management not later
4 than the 360th day after the date the company receives notice under
5 Section 809.053 or Subsection (b).

6 (b) If a company that ceased manufacturing firearms or
7 firearm ammunition, as applicable, after receiving notice under
8 Section 809.053 resumes its manufacturing of firearms or firearm
9 ammunition, as applicable, the state retirement system shall send a
10 written notice to the company informing it that the state
11 retirement system will sell, redeem, divest, or withdraw all
12 publicly traded securities of the company according to the schedule
13 in Subsection (a).

14 (c) Except as provided by Subsection (a), a state retirement
15 system may delay the schedule for divestment under that subsection
16 only to the extent that the state retirement system determines, in
17 the state retirement system's good faith judgment, and consistent
18 with the system's fiduciary duty, that divestment from listed
19 companies will likely result in a loss in value or a benchmark
20 deviation described by Section 809.056(a). If a state retirement
21 system delays the schedule for divestment, the state retirement
22 system shall submit a report to the presiding officer of each house
23 of the legislature and the attorney general stating the reasons and
24 justification for the state retirement system's delay in divestment
25 from listed companies. The report must include documentation
26 supporting its determination that the divestment would result in a
27 loss in value or a benchmark deviation described by Section

1 809.056(a), including objective numerical estimates. The state
2 retirement system shall update the report every six months.

3 Sec. 809.055. INVESTMENTS EXEMPTED FROM DIVESTMENT. A
4 state retirement system is not required to divest from any indirect
5 holdings in actively or passively managed investment funds or
6 private equity funds. The state retirement system shall submit
7 letters to the managers of each investment fund containing listed
8 companies requesting that they remove those companies from the fund
9 or create a similar actively or passively managed fund with
10 indirect holdings devoid of listed companies. If a manager creates
11 a similar fund with substantially the same management fees and same
12 level of investment risk and anticipated return, the state
13 retirement system may replace all applicable investments with
14 investments in the similar fund in a time frame consistent with
15 prudent fiduciary standards but not later than the 450th day after
16 the date the fund is created.

17 Sec. 809.056. AUTHORIZED INVESTMENT IN LISTED COMPANIES.

18 (a) A state retirement system may cease divesting from one or more
19 listed companies only if clear and convincing evidence shows that:

20 (1) the state retirement system has suffered or will
21 suffer a loss in the hypothetical value of all assets under
22 management by the state retirement system as a result of having to
23 divest from listed companies under this chapter; or

24 (2) an individual portfolio that uses a
25 benchmark-aware strategy would be subject to an aggregate expected
26 deviation from its benchmark as a result of having to divest from
27 listed companies under this chapter.

1 (b) A state retirement system may cease divesting from a
2 listed company as provided by this section only to the extent
3 necessary to ensure that the state retirement system does not
4 suffer a loss in value or deviate from its benchmark as described by
5 Subsection (a).

6 (c) Before a state retirement system may cease divesting
7 from a listed company under this section, the state retirement
8 system must provide a written report to the comptroller, the
9 presiding officer of each house of the legislature, and the
10 attorney general setting forth the reason and justification,
11 supported by clear and convincing evidence, for deciding to cease
12 divestment or to remain invested in a listed company.

13 (d) The state retirement system shall update the report
14 required by Subsection (c) semiannually, as applicable.

15 (e) This section does not apply to reinvestment in a company
16 that is no longer a listed company.

17 Sec. 809.057. PROHIBITED INVESTMENTS. Except as provided
18 by Section 809.056, a state retirement system may not acquire
19 securities of a listed company.

20 SUBCHAPTER C. REPORT; ENFORCEMENT

21 Sec. 809.101. REPORT. Not later than January 5 of each
22 year, each state retirement system shall file a publicly available
23 report with the presiding officer of each house of the legislature
24 and the attorney general that:

25 (1) identifies all securities sold, redeemed,
26 divested, or withdrawn in compliance with Section 809.054;

27 (2) identifies all prohibited investments under

1 Section 809.057; and

2 (3) summarizes any changes made under Section 809.055.

3 Sec. 809.102. ENFORCEMENT. The attorney general may bring

4 any action necessary to enforce this chapter.

5 SECTION 2. This Act takes effect September 1, 2019.